

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEITH T. TOWNS, NO. CIV. S-04-1855 FCD/PAN

Plaintiff,

v.

STATUS (PRETRIAL SCHEDULING)
ORDER

AMERIQUEST MORTGAGE COMPANY,
TOWN AND COUNTRY TITLE
SERVICES, INC., NORTH AMERICAN
TITLE COMPANY, and DOES 1 to
10, inclusive,

Defendants.

_____ /

After reviewing the parties' Joint Status Report, the court
makes the following orders:

I. SERVICE OF PROCESS

All named defendants have been served with the exception of
North American Title Company. Plaintiff has 15 days from the
date of this order to complete service. After that time, no
further service will be permitted without leave of court, good
cause having been shown.

1 **II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS**

2 No further joinder of parties or amendments to pleadings is
3 permitted without leave of court, good cause having been shown.
4 See Fed. R. Civ. P.16 (b); Johnson v. Mammoth Recreations, Inc.,
5 975 F.2d 604 (9th Cir. 1992).

6 **III. JURISDICTION/VENUE**

7 Jurisdiction is predicated upon 18 U.S.C. § 1331 and 28
8 U.S.C. § 1441(b). Jurisdiction and venue are not contested.

9 **IV. DISCOVERY**

10 All discovery shall be completed by November 15, 2005. In
11 this context, "completed" means that all discovery shall have
12 been conducted so that all depositions have been taken and any
13 disputes relative to discovery shall have been resolved by
14 appropriate order if necessary and, where discovery has been
15 ordered, the order has been obeyed. All motions to compel
16 discovery must be noticed on the magistrate judge's calendar in
17 accordance with the local rules of this court.

18 **V. DISCLOSURE OF EXPERT WITNESSES**

19 All counsel are to designate in writing, file with the
20 court, and serve upon all other parties the name, address, and
21 area of expertise of each expert that they propose to tender at
22 trial not later than September 9, 2005. The designation shall be
23 accompanied by a written report prepared and signed by the
24 witness. The report shall comply with Fed. R. Civ. P.
25 26(a)(2)(B). By September 30, 2005, any party who previously
26 disclosed expert witnesses may designate rebuttal expert
27 witnesses, who may only express an opinion on a subject covered
28 by an expert witness designated by an adverse party, if the party

1 designating the rebuttal expert witnesses has not previously
2 designated an expert witness to testify on that subject. Such
3 rebuttal designations shall be accompanied by written report
4 which shall also comply with the conditions as stated above.

5 Failure of a party to comply with the disclosure schedule as
6 set forth above in all likelihood will preclude that party from
7 calling the expert witness at the time of trial. An expert
8 witness not appearing on the designation will not be permitted to
9 testify unless the party offering the witness demonstrates: (a)
10 that the necessity for the witness could not have been reasonably
11 anticipated at the time the list was proffered; (b) that the
12 court and opposing counsel were promptly notified upon discovery
13 of the witness; and (c) that the witness was promptly made
14 available for deposition.

15 For purposes of this scheduling order, an "expert" is any
16 person who may be used at trial to present evidence under Rules
17 702, 703, and 705 of the Federal Rules of Evidence, which include
18 both "percipient experts" (persons who, because of their
19 expertise, have rendered expert opinions in the normal course of
20 their work duties or observations pertinent to the issues in the
21 case) and "retained experts" (persons specifically designated by
22 a party to be a testifying expert for the purposes of
23 litigation). Each party shall identify whether a disclosed
24 expert is percipient, retained, or both. It will be assumed that
25 a party designating a retained expert has acquired the express
26 permission of the witness to be so listed. Parties designating
27 percipient experts must state in the designation who is
28 responsible for arranging the deposition of such persons.

1 All experts designated are to be fully prepared at the time
2 of designation to render an informed opinion, and give their
3 bases for their opinion, so that they will be able to give full
4 and complete testimony at any deposition taken by the opposing
5 party. Experts will not be permitted to testify at the trial as
6 to any information gathered or evaluated, or opinion formed,
7 after deposition taken subsequent to designation.

8 **VI. MOTION HEARING SCHEDULE**

9 All dispositive motions, except motions for continuances,
10 temporary restraining orders or other emergency applications,
11 shall be heard no later than January 27, 2006. The parties may
12 obtain available hearing dates by calling Maureen Price, Deputy
13 Courtroom Clerk, (916) 930-4163.

14 All purely legal issues are to be resolved by timely
15 pretrial motions. Local Rule 78-230 governs the calendaring and
16 procedures of civil motions with the following additions:

- 17 (a) The opposition and reply must be filed **by 4:00**
18 **p.m.** on the day due; and
19 (b) When the last day for filing an opposition brief
20 falls on a legal holiday, the opposition brief
21 shall be filed on the last court day **immediately**
22 **preceding** the legal holiday.

23 Failure to comply with Local Rule 78-230(c), as modified by this
24 order, may be deemed consent to the motion and the court may
25 dispose of the motion summarily. Brydges v. Lewis, 18 F.3d 651,
26 652-53 (9th Cir. 1994). Further, failure to timely oppose a

27
28

1 summary judgment motion¹ may result in the granting of that
2 motion if the movant shifts the burden to the nonmovant to
3 demonstrate that a genuine issue of material fact remains for
4 trial. Marshall v. Gates, 44 F.3d 722 (9th Cir. 1995).

5 The court places a page limit of twenty (20) pages on all
6 initial moving papers, twenty (20) pages on oppositions, and ten
7 (10) pages for replies. All requests for page limit increases
8 must be made through the courtroom deputy clerk at least fourteen
9 (14) days prior to the filing of the motion.

10 For the court's convenience, citations to Supreme Court
11 cases should include parallel citations to the Supreme Court
12 Reporter.

13 The parties are reminded that a motion in limine is a
14 pretrial procedural device designed to address the admissibility
15 of evidence. The court will look with disfavor upon
16 dispositional motions (except those noted on page 3) presented at
17 the Final Pretrial Conference or at trial in the guise of motions
18 in limine.

19 The parties are cautioned that failure to raise a
20 dispositive legal issue that could have been tendered to the
21 court by proper pretrial motion prior to the dispositive motion
22 cut-off date may constitute waiver of such issue.

23 **VII. FINAL PRETRIAL CONFERENCE**

24 The Final Pretrial Conference is set for March 24, 2006, at
25 1:30 p.m. At least one of the attorneys who will conduct the
26

27 _____
28 ¹ The court urges any party that contemplates bringing a
motion for summary judgment or who must oppose a motion for
summary judgment to review Local Rule 56-260.

1 trial for each of the parties shall attend the Final Pretrial
2 Conference. If by reason of illness or other unavoidable
3 circumstance a trial attorney is unable to attend, the attorney
4 who attends in place of the trial attorney shall have equal
5 familiarity with the case and equal authorization to make
6 commitments on behalf of the client.

7 Counsel for all parties are to be fully prepared for trial
8 at the time of the Final Pretrial Conference, with no matters
9 remaining to be accomplished except production of witnesses for
10 oral testimony. The parties shall file, not later than seven (7)
11 calendar days prior to the Final Pretrial Conference, a **joint**
12 pretrial statement. The provisions of Local Rules 16-281 shall
13 apply with respect to the matters to be included in the joint
14 pretrial statement. In addition to those subjects listed in
15 Local Rule 16-281(b), the parties are to provide the court with a
16 plain, concise statement that identifies every non-discovery
17 motion tendered to the court and its resolution.

18 Failure to comply with Local Rule 16-281, as modified by
19 this order, may be grounds for sanctions.

20 **At the time of filing the Final Pretrial Conference**
21 **Statement, counsel shall deliver to the court a floppy disk**
22 **compatible with WordPerfect Windows 10, 8.0 or 6.1, or**
23 **WordPerfect 5.1, containing the statement in its entirety**
24 **(including the witness and exhibit lists).**

25 The parties should identify first the core undisputed facts
26 relevant to all claims. The parties should then, in a concise
27 manner, identify those undisputed core facts that are relevant to
28 each claim. The disputed facts should be identified in the same

1 manner. Where the parties are unable to agree as to what
2 disputed facts are properly before the court for trial, they
3 should nevertheless list all disputed facts asserted by each
4 party. Each disputed fact or undisputed fact should be
5 separately numbered or lettered.

6 Each party shall identify and concisely list each disputed
7 evidentiary issue which will be the subject of a motion in
8 limine.

9 Each party shall identify the points of law which concisely
10 describe the legal issues of the trial which will be discussed in
11 the parties' respective trial briefs. Points of law should
12 reflect issues derived from the core undisputed and disputed
13 facts. Parties shall not include argument or authorities with
14 any point of law.

15 The parties shall prepare a joint statement of the case in
16 plain concise language which will be read to the jury at the
17 beginning of the trial. The purpose of the joint statement is to
18 inform the jury what the case is about.

19 The parties are reminded that pursuant to Local Rule 16-281
20 they are required to list in the Final Pretrial Conference
21 Statement **all** witnesses and exhibits they propose to offer at
22 trial. After the name of each witness, each party shall provide
23 a **brief** statement of the nature of the testimony to be proffered.
24 The parties may file a joint list or each party may file separate
25 lists. These list(s) shall not be contained in the body of the
26 Final Pretrial Conference Statement itself, but shall be attached
27 as separate documents to the Joint Pretrial Statement to be used
28 as addenda to the Final Pretrial Order.

1 Plaintiff's exhibits shall be listed numerically.

2 Defendant's exhibits shall be listed alphabetically. The parties
3 shall use the standard exhibit stickers provided by the court:
4 pink for plaintiff and blue for defendant. In the event that the
5 alphabet is exhausted, the exhibits shall be marked "AA-ZZ" and
6 "AAA-ZZZ" etc. All multi page exhibits shall be stapled or
7 otherwise fastened together and each page within the exhibit
8 shall be numbered. The list of exhibits shall not include
9 excerpts of depositions, which may be used to impeach witnesses.

10 In the event that plaintiff(s) and defendant(s) offer the same
11 exhibit during trial, that exhibit shall be referred to by the
12 designation the exhibit is first identified. The court cautions
13 the parties to pay attention to this detail so that all
14 concerned, including the jury, will not be confused by one
15 exhibit being identified with both a number and a letter.

16 The Final Pretrial Order will contain a stringent standard
17 for the offering at trial of witnesses and exhibits not listed in
18 the Final Pretrial Order, and the parties are cautioned that the
19 standard will be strictly applied. On the other hand, the
20 listing of exhibits or witnesses that a party does not intend to
21 offer will be viewed as an abuse of the court's processes.

22 Each party is directed to present to Maureen Price, Deputy
23 Courtroom Clerk, the original exhibits and two (2) copies for the
24 court, no later than 3:00 p.m. on the Friday before trial.

25 The parties also are reminded that pursuant to Rule 16 of
26 the Federal Rules of Civil Procedure it will be their duty at the
27 Final Pretrial Conference to aid the court in: (a) the
28 formulation and simplification of issues and the elimination of

1 frivolous claims or defenses; (b) the settling of facts that
2 should properly be admitted; and (c) the avoidance of unnecessary
3 proof and cumulative evidence. Counsel must cooperatively
4 prepare the joint Final Pretrial Conference Statement and
5 participate in good faith at the Final Pretrial Conference with
6 these aims in mind.² A failure to do so may result in the
7 imposition of sanctions which may include monetary sanctions,
8 orders precluding proof, elimination of claims or defenses, or
9 such other sanctions as the court deems appropriate.

10 **VIII. TRIAL SETTING**

11 The trial is set for **May 23, 2006** at 9:00 a.m. Trial will
12 be by the court. The parties estimate a trial length of
13 approximately **2-4 days**.

14 **IX. SETTLEMENT CONFERENCE**

15 No settlement conference is currently scheduled. A
16 settlement conference may be set at the time of the Final
17 Pretrial Conference or at an earlier time at the parties'
18 request. In the event that an earlier settlement conference date
19 is requested, the parties shall file said request jointly, in
20 writing. If the case will be tried to a jury, all parties should
21 be prepared to advise the court whether they will stipulate to
22 the trial judge acting as settlement judge and waive
23 disqualification by virtue thereof.

24

25 ² "If the pretrial conference discloses that no material
26 facts are in dispute and that the undisputed facts entitle one of
27 the parties to judgment as a matter of law," the court may
28 summarily dispose of the case or claims. Portsmouth Square v.
Shareholders Protective Comm., 770 F.2d 866, 868-69 (9th Cir.
1985).

1 Counsel, except for Counsel for the United States, are
2 instructed to have a principal with full settlement authority
3 present at the Settlement Conference or to be fully authorized to
4 settle the matter on any terms. At least seven (7) calendar days
5 before the Settlement Conference, counsel for each party shall
6 submit to the chambers of the settlement judge a confidential
7 Settlement Conference Statement. Such statements are neither to
8 be filed with the Clerk nor served on opposing counsel. Each
9 party, however, shall serve notice on all other parties that the
10 statement has been submitted. If the settlement judge is not the
11 trial judge, the Settlement Conference Statement shall not be
12 disclosed to the trial judge.

13 **X. EARLY NEUTRAL EVALUATION**

14 Pursuant to the agreement of the parties and Local Rule 16-
15 271, this case is referred to Early Neutral Evaluation.

16 **XI. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER**

17 The parties are reminded that pursuant to Rule 16(b) of the
18 Federal Rules of Civil Procedure, the Status (Pretrial
19 Scheduling) Order shall not be modified except by leave of court
20 upon a showing of good cause. Agreement by the parties pursuant
21 to stipulation alone does not constitute good cause. Except in
22 extraordinary circumstances, unavailability of witnesses or
23 counsel does not constitute good cause.

24 ////

25 ////

26 ////

27 ////

28

XII. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

2 This Status Order will become final without further order of
3 the court unless objections are filed within **ten (10) court days**
4 of service of this Order.

IT IS SO ORDERED.

DATED: August 30, 2004

~~FRANK C. DAMRELL, Jr.
UNITED STATES DISTRICT JUDGE~~